S.B. CIVIL WRIT PETITION NO.1458/1995.
(YAKUB KHAN VS. KRISHI UPAJ MANDI SAMITI & ORS.)

DATE OF ORDER : 13.04.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. P.K. Lohra for the petitioner.
Mr. Ravi Bhansali for the respondents.

By this petition for writ, a direction is sought by the petitioner to include his name in the seniority list of Lower Division Clerks and further to consider his candidature for the purpose of promotion to the post of Upper Division Clerk.

The factual matrix necessary to be noticed for adjudication of this petition for writ is that the petitioner entered in the services of the respondent Krishi Upaj Mandi Samiti, Jodhpur being appointed as Class -IV employee in the pay scale of Rs. 60-1-85 under an order dated 30.03.1973, a promotion was accorded to him as Auction Clerk by an order dated 26.04.1977. It is pertinent to note that the post of Auction Clerk is a post equivalent to Junior Clerk/Lower Division Clerk prescribed under the Rajasthan Agricultural Produce Markets (Market Committee Employees) Service Rules, 1975 (hereinafter referred to as “the Rules of 1975”).

The Director, Agricultural Marketing, Jaipur declared a seniority list of Lower Division Clerks including the Auction Clerks working in various Agricultural Marketing Committees in the State of Rajasthan under an office order dated 30.03.1992. In the seniority list referred above, name of the petitioner was not shown, however, name of one Shri Prakash Singh Sankhala (respondent No.5) was shown at S.No.32.

The allegation of the petitioner is that though Shri Prakash Singh Sankhala and Shri Brij Kishore were junior to him in the cadre of Class-IV employees, they were shown senior to him as a promotion was accorded to them as clerk prior to him erroneously. In reply to that, it is contended by the respondents that Shri Prakash Singh Sankhala and Shri Brij Kishore were promoted as Lower Division Clerk under an order dated 26.05.1976 i.e. prior to the petitioner and, therefore, they were rightly given seniority at higher position than the petitioner.

Heard counsel for the parties.

The petitioner was employed as a Class-IV employee on 30.04.1973, whereas the respondents Shri Prakash Singh Sankhala and Shri Brij Kishore admittedly entered in the services as Class -IV employees on 16.01.1976 i.e. at least after

a lapse of about three years from the date of entering the petitioner in Class-IV cadre. Under the Rules of 1975, the eligibility for promotion as Junior Clerk (LDC)/ Auction Clerk is that the incumbent must be possessing Secondary/ High School from the recognized Board with three years experience as a Class -IV service. It is true that the promotion was given to Shri Prakash Singh Sankhala and Shri Brij Kishore on 26.05.1976 but that was not in accordance with law as they were not possessing the requisite experience as prescribed under the Rules of 1975.

Be that as it may, it is the position admitted that the petitioner was senior viz -a – viz. Shri Prakash Singh Sankhala and Shri Brij Kishore in the cadre of Class -IV employee, therefore, he was certainly having a better right to be considered for promotion as Lower Division Clerk/ Auction Clerk than the respondent nos. 4 and 5. I do not find any just and valid reason for not promoting him at least from the date promotion was given to respondent nos. 4 and 5 as Lower Division Clerk. The reason given by the respondents that the services of the petitioner were regularized at a subsequent stage is also of no consequence as the respondent nos. 4 and 5 too were not promoted in accordance with Rules being not having required experience, whereas the petitioner then for all purposes was eligible to be considered for promotion.

Accordingly, this petition for writ is allowed. The respondents are directed to place the petitioner in the seniority list concern just above Shri Prakash Singh Sankhala and also to consider his candidature for the purpose of promotion as Upper Division Clerk in accordance with law from the date he became eligible for the same.

No order to cost.

(GOVIND MATHUR)J.

Anil/